



भारत का राजपत्र The Gazette of India

असाधारण
EXTRAORDINARY

भाग II—खण्ड 2
PART II—Section 2

प्राधिकार से प्रकाशित
PUBLISHED BY AUTHORITY

सं० 34] नई दिल्ली, शुक्रवार, जुलाई 29, 1988/श्रावण 7, 1910
No. 34] NEW DELHI, FRIDAY, JULY 29, 1988/SHRAVANA 7, 1910

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन
की रूप में रखा जा सके।

Separate paging is given to this Part in order that it may be filed
as a separate compilation.

RAJYA SABHA

The following Bills were introduced in the Rajya Sabha on the 29th July, 1988:—

I

BILL No. XXVI OF 1988

A Bill further to amend the Constitution of India.

BE it enacted by Parliament in the Thirty-ninth Year of the Republic of India as follows:—

1. This Act may be called the Constitution (Amendment) Act, 1988.

Short
title.

2. In the Eighth Schedule to the Constitution,—

Amend-
ment of
Eighth
Schedule

(a) entries 7 to 15 shall be re-numbered as entries 8 to 18, respectively;

(b) before entry 8 as so re-numbered, the entry "7. Konkani" shall be inserted;

(c) after entry 8 as so re-numbered, the entry "9. Manipuri" shall be inserted; and

(d) after entry 10 as so re-numbered, the entry "11 Nepali" shall be inserted.

STATEMENT OF OBJECTS AND REASONS

There is a good number of Nepali speaking people in the Darjeeling district of West Bengal, Konkani speaking people in Maharashtra and Manipuri speaking people in Manipur who have contributed substantially to the overall development and advancement of the country. These people have a feeling of being kept out of the mainstream of national development. The alien rulers for serving their own interests kept such people educationally, culturally, economically and politically backward.

To harness the patriotic urge of the people speaking these languages and in the interest of national integration and development of the country, it is desirable that Nepali, Konkani and Manipuri languages are included in the Eighth Schedule to the Constitution of India.

Hence, this Bill.

GURUDAS DAS GUPTA

II

BILL NO. XXXI OF 1988

*A Bill further to amend the Ancient Monuments and Archaeological Sites
and Remains Act, 1958*

BE it enacted by Parliament in the Thirty-ninth Year of the Republic
of India as follows:—

1. This Act may be called the Ancient Monuments and Archaeological
Sites and Remains (Amendment) Act, 1988.

Short
title.

2. In section 3 of the Ancient Monuments and Archaeological Sites
and Remains Act, 1958, after the words, "to be of national importance"
where they occur first, the words "and the 'Babri Masjid' and 'Ram-
janambhoomi' located in the city of Ayodhya of Faizabad District in the
State of Uttar Pradesh" shall be inserted.

Amend-
ment of
Section
3

STATEMENT OF OBJECTS AND REASONS

Babri Masjid--Ram Janam Bhoomi Complex happens to be a historical complex. It has now suddenly become a centre of controversy involving more than one community. By raising the controversy the Communal and chauvinist forces in the country are raising their ugly heads and fanning communal hatred, diverting attention of the people from other important problems before the country. If it is allowed to linger on, it can result in serious communal situation. The only solution to the present controversy lies in declaring the Babri Masjid--Ram Janam Bhoomi complex of historical national importance without allowing performance of any kind of religious prayers, rituals or other like ceremonies within the complex. Archeological department of the Government of India will look after it and it will be properly maintained as an important relic of the past.

Hence this Bill.

GURUDAS DAS GUPTA

III

BILL NO. XXVIII OF 1988

A Bill to provide for the auditing of accounts of Banking Companies by an independent authority and for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Thirty-ninth Year of the Republic of India as follows:—

1. (1) This Act may be called the Banking Companies (Audit) Act, 1988.

Short
title,
extent and
commence-
ment.

(2) It extends to the whole of India.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. In this Act, unless the context otherwise requires,—

Defini-
tions.

(a) "Auditor-General of Banking Companies" means the Auditor-General of Banking Companies appointed under section 3;

(b) "Banking Company" means a company within the meaning of section 5 of the Banking Regulation Act, 1949 but does not include a Foreign Company within the meaning of section 591 of the Companies Act, 1956.

10 of 1949.

1 of 1966

(c) "prescribed" means prescribed by the rules made under this Act,

(d) words and expressions used but not defined in this Act and defined in the Banking Regulation Act, 1949 and the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, shall have the meaning respectively assigned to them in these Acts. 5 of 1970.

Auditor-General of Banking Companies,

3. (1) There shall be an Auditor-General of the Banking Companies who shall be appointed by the President by warrant under his hand and seal and shall only be removed from office in like manner and on the like grounds as the Comptroller and Auditor-General of India under the provisions of the Constitution.

(2) Every person appointed as the Auditor-General of Banking Companies shall before entering upon his office, make and subscribe, before the President, or some persons appointed in that behalf by the President, an oath or affirmation according to the form as may be prescribed.

(3) The salary and other conditions of service of the Auditor-General of Banking Companies shall be such as may be prescribed:

Provided that neither the salary of the Auditor-General of Banking Companies nor his rights in respect of leave of absence, pension or age of retirement shall be varied to his disadvantage after his appointment.

(4) The Auditor-General of Banking Companies shall not be eligible for further office either under the Government of India or under the Government of any State or in any Banking Company after he has ceased to hold his office.

Duties and powers of the Auditor-General of Banking Companies,

4. The Auditor-General of Banking Companies shall perform such duties and exercise such powers in relation to the accounts and audit thereof, of all the Banking Companies as may be prescribed:

Provided that the accounts of all the Banking Companies shall be kept in such form as the Auditor-General of Banking Companies may prescribe.

The Banking Companies to furnish accounts, to Auditor-General of Banking Companies for audit.

5. Every Banking Company shall furnish to the Auditor-General of Banking Companies all the accounts maintained by it, who shall cause them to be audited not later than six months after the last date of a financial year to which the accounts relate.

Audit Report.

6. The Reports of the Auditor-General of Banking Companies relating to the accounts of the Banking Companies shall be submitted to the President who shall cause them to be laid before each House of Parliament.

Act to have overriding effect

7. The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.

8. (1) The Central Government may, with the approval of the President, and by notification in the Official Gazette, make rules for the purpose of carrying into effect the provisions of this Act. Power to make rules.

(2) In particular, and without prejudice to the generality of the foregoing provisions, such rules may provide for--

(a) the appointment of the staff of the Auditor-General of Banking Companies;

(b) the salary, allowances and pension payable to and other conditions of service of the Auditor-General of Banking Companies;

(c) the form in which the audit of accounts of the Banking Companies may be made;

(d) any other matter which is to be or may be prescribed or in respect of which this Act makes no provisions or makes insufficient provisions and provision is in the opinion of the President necessary for the proper implementation of this Act.

STATEMENT OF OBJECTS AND REASONS

Huge amounts of monies are deposited in the Banks and they hold the funds and invest them. There is hardly any arrangement for the total audit of the accounts of the banks every year. The partial and incomplete audit as is done now is no protection against manipulation and falsification of accounts and cases of fraud and misappropriation are on the rise and the Banking system is in peril. This bill seeks to set up an independent audit authority to carry out total audit of all the banks of the country every year.

GURUDAS DAS GUPTA

FINANCIAL MEMORANDUM

Clause 3 of the Bill provides for the appointment of an Auditor-General of Banking Companies. It will also be necessary to provide requisite staff for the office of the Auditor-General of Banking Companies. Expenditure incurred on this account will be met from the Consolidated Fund of India.

It is estimated that the expenditure involved will be of the order of rupees one crore per annum of recurring nature and rupees fifteen lakhs of non-recurring nature.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 8 of the Bill empowers the Central Government to make rules to carryout the purposes of the Bill when enacted. The matters in respect of which rules may be made are matters of procedure or detail. The delegation of legislative power is, therefore, of a normal character.

IV

BILL NO. XXXIV OF 1988

A Bill to provide for the protection of the Homebased workers and for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Thirty-ninth Year of the Republic of India as follows:—

1. (1) This Act may be called the Homebased Workers' (Protection) Act, 1988.

Short title,
extent and
commence-
ment.

(2) It extends to the whole of India.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. In this Act, unless the context otherwise requires,—

Definition.

(a) "appropriate Government" means in the case of a State, the State Government and in the case of a Union Territory, the Government or the Administration, as the case may be, of the Union Territory;

(b) "Board" means the National Tripartite Board established under section 2 of this Act;

(c) "contractor" in relation to a homebased worker means a person who undertakes, whether as an independent Contractor, or agent, or employee or otherwise to produce a given result for an establishment or person by engaging homebased workers in any manner whatsoever and includes a sub-contractor by whatever name called;

(d) "Employer" means,—

(a) in relation to contract labour, the principal employer, and

(b) in relation to other labour, the person who has the ultimate control over the affairs of any establishment or who has, by reason of his advancing money, supplying goods or otherwise, a substantial interest in the control of the affairs of any establishment, and includes any other person to whom the affairs of the establishment are entrusted, whether such other person is called the managing agent, manager, superintendent or by any other name;

(e) "Establishment" means any place or premises, including the precincts thereof, whether such premises be residential or otherwise or partly residential and partly non-residential, in which, or in any part of which, any small scale industry, trade, business, or manufacture is being, or is ordinarily, carried on;

(f) "prescribed" means prescribed by rules made under this Act;

(g) "worker" means any person employed in connection with the work of any establishment to do any skilled, semi-skilled or unskilled, manual, technical or clerical work for hire or reward and includes those workers who are brought under sale purchase system whether the terms of employment be express or implied.

(h) "wages" means all remunerations capable of being expressed in terms of money which, if the terms of contract of employment, whether express or implied, are fulfilled, be payable to a homebased worker in respect of the work done in such employment.

Establishment of National Tripartite Board.

3. (1) There shall be established by the Central Government a Board to be known as the National Tripartite Board which shall consist of the representatives of the appropriate Government the representatives of the employers including the contractors and the representative of the homebased workers:

Provided that the representatives of the homebased workers on the National Tripartite Board shall be elected from amongst the registered homebased workers by secret ballot.

(2) It shall be the duty of the National Tripartite Board to enunciate the national policy in regard to the homebased workers and suggest ways and means for their ultimate rehabilitation in life.

4. (1) The Board shall entertain complaints from registered home-based workers in respect of their conditions of service or the welfare benefits under this Act of the scheme or rules framed thereunder.

Duties
of the
Board.

(2) It shall exercise such powers as may be prescribed.

5. There shall be formulated a Scheme by the Board for ensuring regular employment and general welfare of the homebased workers.

Scheme
for
ensuring
regular
employ-
ment for
home-
based
workers.

6. (1) There shall be established an Advisory Council to advise the National Tripartite Board on such matters as may arise in the administration of this Act.

Advisory
Council.

(2) The members of the Advisory Council shall be appointed by the appropriate Government in such manner as may be prescribed by rules made under this Act.

Provided that the Advisory Council shall include equal number of members representing—

- (i) the appropriate Government;
- (ii) the organisations concerned with the welfare of homebased workers; and
- (iii) the registered employers of homebased workers.

7. It shall be the duty of every State Government and the Union Territory Administration to carry out the policy of the Board and feed back the experience gained during the process of implementation of the policy and to give suggestions for improvement of the policy.

Duty to
carry out
the policy
of Board.

8. (1) The appropriate Government may, by notification in the Official Gazette, appoint such persons as it thinks fit to be the Commissioner for Homebased workers and such persons as it thinks fit to be the Assistant Commissioners to assist the Commissioner.

Commis-
sioner for
Home-
based
Workers.

(2) The Commissioner and Assistant Commissioners of Homebased Workers shall be deemed to be public Servants within the meaning of the Indian Penal Code.

9. The Commissioner and Assistant Commissioner of the Homebased Workers shall exercise such powers as may be conferred upon them by the rules made under this Act.

Powers
of the
Commis-
sioner.

10. (1) Every Commissioner for Homebased Workers shall,—

- (a) maintain a district-wise register of homebased workers with such particulars, and in such manner, as may be prescribed;

Function
of the
Commis-
sioner.

(b) register the names and other particulars of the homebased workers;

(c) maintain a district-wise register of employers employing homebased workers with such particulars, and in such manner as may be prescribed;

(d) make surveys of homebased workers;

(e) issue identity-cards to homebased workers.

(2) The Commissioner shall perform such other functions as may be assigned to it by the appropriate Government from time to time.

Registra-
tion of
Employers.

11. Every employer of an establishment shall, within such period, as the appropriate Government may, by notification in the Official Gazette, fix in this behalf make an application to the Commissioner of Homebased workers in such form and manner as may be prescribed for the registration of the establishment.

Punish-
ment for
unregistered
employer.

12. (1) No Employer unless he has registered himself with the Commissioner of Homebased Workers shall engage any homebased worker.

(2) If an unregistered employer engages any homebased worker, he shall be punishable with imprisonment for a term which may extend to one year or with fine or with both.

Prohibi-
tion of
employing
unregister-
ed home-
based
workers.

13. No employer shall employ any homebased workers who has not registered himself with the Commissioner for Homebased Workers.

Minimum
wages
to be paid
to the
homebased
workers.

14. Every employer shall pay to a homebased worker minimum wages as may be fixed by the Board from time to time:

Provided that such minimum wages if fixed on a piece rate basis shall not be less than the rate wage fixed for hours and while calculating such wages the time for coming to employer for raw material and depositing the finished product of the homebased worker shall also be taken into account.

Establish-
ment of
Homebased
Workers'
Welfare
Fund.

15. The appropriate Government shall, by due appropriation, establish a fund to be called the Homebased Worker Welfare Fund for the Welfare of Homebased Workers.

Scheme
for Pen-
sion-cum-
Provident
Fund.

16. There shall be formulated a Scheme by the appropriate Govern-ment for providing Pension-cum-Provident Fund facility to the homebased workers on their attaining the age of sixty years out of the Fund created under section 14.

17. The dependents of any homebased worker who dies while working shall be paid a lumpsum compensation of rupees five thousand or more depending upon the length of his service and age out of the fund created under section 14.

Compensation for death while working.

18. Every employer shall, before engaging any homebased worker, notify his requirement of workers to the Commissioner for Homebased Workers.

Employer to notify his need of home-based workers to the Commissioner.

19. No employer shall reject a homebased worker on unreasonable grounds.

Employer not to reject a worker.

20. (1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

Power to make rules.

(2) In particular and without prejudice to the generality of the foregoing powers, the rules may provide for the—

(a) payment of layoff wages by the employer if he is unable to give work to the homebased worker on account of bad weather, shortage of raw material and other circumstances;

(b) sickness benefits for the homebased workers;

(c) setting up of creches for the children of homebased workers;

(d) the Maternity Benefit;

(e) terms and conditions of service of homebased workers.

(3) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament.

STATEMENT OF OBJECTS AND REASONS

Experience has shown that homebased workers have not been able to secure the protection and benefits of labour and welfare legislation. Working as they are in their homes, either on a piece rate basis or on a time rate basis, they become extremely vulnerable to abuse by their employers. Evasion of labour legislation becomes possible as they do not work in a factory. Such evasion is also possible due to the system of contracting and sub-contracting, being adopted by employers. It becomes difficult to identify the ultimate employer of the homebased workers. Very often even the nature of their labour is disguised in the form of a sale-purchase agreement. In these circumstances it has become necessary to enact a new legislation dealing specifically with the homebased workers which will ensure their regularity and continuity of employment, protection and improved conditions of employment, such as wages, hours of work, welfare benefits and working conditions.

Hence, this Bill.

ELA RAMESH BHATT

FINANCIAL MEMORANDUM

Clause 8 of the Bill provides for the appointment of a Commissioner for Homebased Workers and other staff for carrying out the purposes of this Act. It will involve a non-recurring expenditure for official accommodation, inspection vehicles, purchase of office furniture, etc. to the tune of rupees 10 lakhs and the recurring expenditure is likely to be rupees 5 lakhs.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 20 of the Bill empowers the Central Government to frame rules for carrying out the purposes of the Act. The matters with respect to which rules may be framed are matters of procedure or detail.

The delegation of Legislative power is, therefore, of a normal characters.

SUDARSHAN AGARWAL,
Secretary-General.